

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

CLIFFORD BAILY, CLIFFORD BLACK, )  
WESLEY CALHOUN, CURTIS DEASON, )  
RUTH GRAVES, MICKEY GRIZZARD, )  
JIMMY PERRY, HERBERT STANLEY SIKES, )  
And PHILLIP THOMPSON, )

Plaintiffs, )

vs. )

MERCK & CO., INC., a foreign or )  
Domestic Corporation, DAVID SPARKMAN, )  
KATHERINE HOLMES, LORI LOVETT, )  
SCOTT BARTLETT, CORAL HARPER, )  
MELISSA SANTIAGO, HENRY MITCHAM, )  
JERRY PHARR, JASON DELK, CHARLES )  
HENDERSON, JAMES HOUSTON, JULIE )  
MELTON, JULIE HODGES, MELISSA )  
BAUER, NATASHA WALKER-MCGLOTHAM )  
RANDY WELLS, and the Defendants A, )  
B, C, D, E, X & Z whether singular or )  
plural, being those persons, firms or )  
entities who or which proximately )  
caused or contributed to the Plaintiff's )  
and Plaintiff's decedent's other harm )  
and the other damages as complained )  
of herein whose true names are )  
unknown to the Plaintiff but will be )  
added by amendment when correctly )  
ascertained, )

Defendants. )

2006 OCT 30 P 3:39

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

CASE NUMBER: CV-

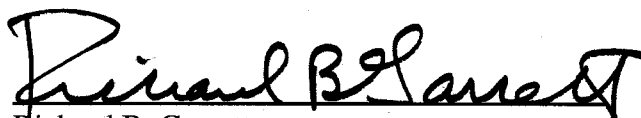
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Removed from the  
Circuit Court of  
Randolph County, Alabama  
(CV-06-145)

MOTION TO DISMISS

Without waiving any other defense he may have to this lawsuit, Defendant **Henry Mitcham** moves to dismiss the Plaintiffs' Complaint, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. In support of

this motion, Mitcham states that he has been fraudulently joined to this action, and incorporates the legal arguments, citations, and exhibits in Merck & Co., Inc.'s Notice of Removal.



Richard B. Garrett  
One of the Attorneys for Defendant,  
Merck & Co., Inc.

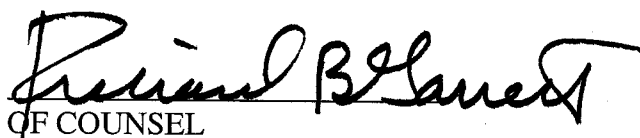
OF COUNSEL:

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Facsimile: (334) 262-6277

CERTIFICATE OF SERVICE

I hereby certify that I have served the above and foregoing document upon all interested parties by placing a copy of same in the United States Mail, postage prepaid and properly addressed on this the 30th day of October 2006, as follows:

James S. Hubbard  
Thomas J. Knight  
HUBBARD & KNIGHT  
1125 Noble Street  
Anniston, Alabama 36201

  
OF COUNSEL